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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AGUSTIN MARTIN FERRA-
MANZANO; CLAUDIA EMILIA
PEREZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74853

Agency Nos. A070-919-148
A070-919-149
A076-715-534
A076-715-535

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Agustin Martin Ferra-Manzano, Claudia Emilia Perez, and their children,
natives and citizens of Mexico, petition for review of the Board of Immigration

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appeals’ (“BIA”) order denying their motion to reopen proceedings based on ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C.

§ 1252. We review for abuse of discretion the BIA’s denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA acted within its discretion in denying petitioners’ motion as untimely, *see* 8 C.F.R. §§ 1003.2(c)(3), 1003.23(b)(4)(ii) (motion to reopen and rescind an in absentia removal order based on exceptional circumstances must be filed within 180 days of the final administrative decision), and petitioners failed to establish that they acted with due diligence, *see Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007) (equitable tolling is available “when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence”) (internal quotation marks and citations omitted).

PETITION FOR REVIEW DENIED.